IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

WP(C).No. 3846 of 2007(G)

PETITIONERS:

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1. ROYAL PARK OWNERS ASSOCIATION,
   A REGD.ASSOCIATION OF APARTMENT OWNERS,HAVING ITS REGD.OFFICE NH BYE PASS ROAD, CHALIKKAVATTOM, VYTTILA P.O.,KOCHI-682019, REPRESENTED BY THE PRESIDENT MR.M.C. SAMUEL, VADAVUPARAMBIL, VENNALA P.O., COCHIN-28.

2. MR.M.C. SAMUEL, AGED 56,
   SON OF LATE M.V. CHANDY, VADAVUPARAMBIL, VENNALA P.O., COCHIN-28.

BY ADV. SRI.SREELAL N.WARRIER
SRI.V.C.JOY

RESPONDENTS:

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1. THE TAHSILDAR AND ASSESSING AUTHORITY
   (UNDER THE KERALA BUILDING TAX ACT), KANAYANNUR TALUK, ERNAKULAM-682 016.

2. THE VILLAGE OFFICER,
   POONITHURA VILLAGE, ERNAKULAM DISTRICT.

BY GOVERNMENT PLEADER SRI.MOHAMMED REFIQ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

WP(C).No.3846 OF 2007-G

Dated this the 5th day of February, 2007.

JUDGMENT

The first petitioner is an association of apartment owners of a residential complex called Royal Park Owners in Chalikkavattom, Poonithura Village. The second petitioner is a member of that association. This writ petition is filed by them mainly aggrieved by the steps taken by the first respondent to assess the said apartment complex to building tax with notice to the original land owners wherein the present complex constructed is proposed to be assessed as a single unit. The notices issued in this regard are Exts.P4 and P6. Ext.P4 is issued to the Royal Park. There is no such person or firm in that name. Ext.P6 is issued to George Thomas, Joseph Joseph, Varghese Mathew. They were the erstwhile land owners. The petitioners point out that under Section 19 of the Kerala Building Tax Act, ultimately the building assessment made will be a charge on the property. The petitioners are presently the owners of various apartments , therefore these proceedings taken behind their back will seriously prejudice them.

2. I heard the learned Government Pleader for the respondents also.

3. Normally, no liability can be fastened on the petitioners unless they are heard. But, if the construction is not covered by Explanation 2 to Sec.2 (e) of the Kerala Building Tax, the land owner will be liable for assessment. If the construction is covered by Explanation 2 to Sec.2 (e), the apartments should be assessed separately. Now, it is only a stage of notice. The petitioners may bring their grievances to the notice of the first respondent. In that event, while passing final orders on Exts.P4 and P6 those aspects shall also be taken into account. Needless to say, if an adverse order is passed, the petitioners can work out their remedies. All their contentions are kept open.

The writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS